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Remarks:

Reconsideration of the above referenced application in view of the enclosed amendment and remarks is requested. Claims 1, 6, 11, 16, 20 and 25 have been amended. Existing Claims 1 to 28 remain in the application.

ARGUMENT

The Examiner maintains the rejections of the previous office action. These rejections are respectfully traversed and Claims 1 to 28 are believed allowable based on the above amendments and the following discussion.

Independent Claims 1, 11 and 20 require that *the first and second data samples include a level of memory utilization during application execution, and wherein the first and second data samples form at least a portion of a set of data samples, the set of data samples to be used to determine a measure of performance of the computer processor while executing the application.* Neither Rivin et al. nor the other cited references teach or disclose gathering sets of data samples comprising memory utilization information. Rivin et al. teach a system for application code profiling. The profiling comprises retrieving the program counter, or equivalent, at random intervals of time in order to determine how much of the execution time is spent in each module or subroutine. At no time do Rivin et al. teach that any other data can be sampled. Thus, applying the teaching of Rivin et al. will not result in Applicants' claimed invention.

Specifically regarding Claims 6, 16, 20 and its progeny, Applicants' claimed invention requires that *data samples in the set of data samples are statistically distributed.* The cited references do not teach or disclose statistically distributed data samples. Therefore, Claims 6, 16, 20 and its progeny are believed allowable.

With further regard to Claim 20, the Examiner rejects Claim 20 using Applicants' Background section as prior art. Claim 20 now also requires a computer processor to execute instructions to *execute the application during a statistically distributed random inter-sample period.* These limitations are not taught in the Background Section. Increasing a sampling

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period is not the same as a statistically distributed random inter-sample period. Therefore, Claims 20 and its progeny are believed allowable.

Claim 25 is amended as suggested by the Examiner to overcome the Examiner's §112 rejection. Claims 25 and 26 are now believed to be allowable based on the above amendment.

All claims remaining in the application are now allowable.

Regarding the Examiner's objection to the drawings, it is believed that the drawings show the claimed features. In Figure 1 there is shown that data gathering occurs between blocks 14 and 18. Main program execution resumes in block 20 which is the inter-sample period before data gathering resumes again (blocks 14-18) after overhead operations in block 21. This operation flow diagram clearly shows that data gathering hardware starts (14), data gathering occurs during execution of the program (16) and then the data gathering hardware is stopped (18). The program execution and overhead operations are performed in blocks 20 and 21, during the inter-sample period.

Figure 2 also clearly shows that the overhead periods (21a,b) are within the inter-sampling periods (20a,b). Figure 2 also clearly shows a timing diagram 30 including an execution timeline 32 that shows the execution of main program instructions during periods 40a-40g that includes the gathering of samples during periods 40b and 40e based on sampling process 10. The description of Figure 2 on pages 4 and 5 of the Specification describe the running of an application during the inter-sample period and the dependency of the inter-sample period (20a,b) upon the start and stop of the data gathering hardware in conjunction with Figure 1.

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CONCLUSION

In view of the foregoing, Claims 1 to 28 are all in condition for allowance. If the Examiner has any questions, the Examiner is invited to contact the undersigned at (703) 633-6845. Early issuance of Notice of Allowance is respectfully requested. Please charge any shortage of fees in connection with the filing of this paper, including extension of time fees, to Deposit Account 02-2666 and please credit any excess fees to such account.

Respectfully submitted,

Dated: <u>19 Sep. 2005</u>   <u>s/Joni D. Stutman-Horn/</u>
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